

December 1, 1954

Miss Ruth G. Morgan  
Acting Labor Commissioner  
Department of Labor  
Star Theater Building  
Pleasant Street  
Concord, N. H.

Dear Miss Morgan:

This is in response to your letter of November 19 in which you asked our opinion as to the status of nine Senior Girl Scouts doing volunteer service without remuneration at the Claremont General Hospital.

Specifically, you asked whether such service could be considered as "employment" presumably within the meaning of the "Workmen's Compensation Act." You also requested an opinion as to their status with respect to the "Child Labor Law" and the "Minimum Wage Law."

An employee is defined in section 2 of R. L. chapter 216 as amended by chapter 266 of the Laws of 1947 "as any person in the service of an employer... under any contract of hire, express or implied, oral or written..." It is the opinion of this office the girls in question are not under a contract of hire since they expect no payment for their services, and consequently the relationship is not subject to the provisions of the Workmen's Compensation Act.

I deem it important to point out at this time that the foregoing opinion is given solely for your benefit as Labor Commissioner. Under the provisions of section 9 of the Act a criminal penalty is imposed for failure to comply with the

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requirements of section 8. As you know prosecutions under section 9 are usually instigated by your office. Since no case is now pending before you requiring a determination of this question in the making of an award, I presume that this opinion was requested so that you could advise the hospital in advance as to whether or not you would take action under section 9. I do not believe that it would be good practice to attempt to advise the hospital in advance of the existence or non-existence of civil liability in the event of injury or illness to the children in question. This is a question that in the event of injury would ultimately be determined in adversary proceedings. Since this opinion would be of no effect in such proceedings I believe that we should hesitate to advise the hospital on the question of liability.

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*Civil* It is our further opinion that the children in question are subject to the Child Labor Law (R. L. chapter 137) and must procure an employment certificate as provided in section 24. It is noted that section 24 provides that "no child under sixteen years of age shall be employed or permitted or suffered to work etc. This appears to be sufficiently broad to include the services in question though no wages are paid. Employment certificates should therefore be obtained.

You also asked whether the relationship in question is subject to the Minimum Wage Law. In our opinion the relationship in question is not subject to the Minimum Wage Law (R. L. Chapter 213) since the girls are not gainfully employed(s 1, V)

Very truly yours,

Elmer T. Bourque

WFB-g